

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District SOUTHERN DISTRICT TEXAS	
Name of Movant RUDY RUDOLPH		Prisoner No. 88466-079	Case No. H-00-633-02
Place of Confinement FEDERAL COMPLES LOW COLEMAN FLORIDA			
UNITED STATES OF AMERICA		RUDY RUDOLPH	
		(name under which convicted) Michael N. Milby, Clerk	

H-05-0669
FILED
FEB 25 2005

MOTION

1. Name and location of court which entered the judgment of conviction under attack DISTRICT COURT
SOUTHERN DISTRICT TEXAS HOUSTON
2. Date of judgment of conviction 10-23-03
3. Length of 60months
4. Nature of offense involved (all counts) Mail Fraud

5. What was your plea? (Check one)

(a) Not guilty ☐

(b) Guilty ☒

(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☐

(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

(2)

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9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised _____

(3)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective Assistance of Counsel-Counsel Watson
failed to file a direct appeal

Supporting FACTS (state *briefly* without citing cases or law): When the Defendant was
sentenced he instructed on such date Counsel Watson to file a
direct appeal. Further upon such instruction the defendant
paid Watson \$700.00 from money he has at sentencing. (Affadavit
from wife supports such). It was only later approximately
April 2004 that the Defendant was advised that the direct
appeal had not been filed because of Watson's ineffectiveness.

B. Ground two: Ineffective Assistance of Counsel
Counsel Watson in failing to perfect as instructed by my direct
appeal he failed to challenge and object to the courts improper
Supporting FACTS (state *briefly* without citing cases or law): enhancement of my base offense
level and therein not submitting such to a jury. Thus my Sixth
Amendment right was violated.

FACTS- When Counsel Watson was instructed at sentencing to file
the direct appeal it was therein noted by the Defendant that he
the Defendant objected to the enhancements and told Watson to
include such on his direct appeal.

C. Ground three: Ineffective Assistance of Counsel- Again failure to
perfect appeal and subsequently failure to object to the imposed
restitution.
Supporting FACTS (state *briefly* without citing cases or law): The restitution was yet another
objection entered by the Defendant and thus he instructed Watson
to file such on direct appeal because of the miscalculation
and legality of such

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D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Byron Watson

(b) At arraignment and plea Byron Watson

(c) At trial _____

(d) At sentencing Byron Watson

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(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☒ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future: Federal

District Court-Southern District Texas Houston

(b) Give date and length of the above sentence: December 1 2003 24moths

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐


Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

February 20 2005

Date



Signature of Petitioner

I Rudy Rudolph certify that this Memorandum and
2255 Motion was postage paid and placed in the Inmate
Mail on February 20 2005.

NOTARY SEAL

FCC Coleman, Florida Sumter County

Subscribed and sworn before me this
20 day of Feb, 2005
[Signature]
Case Manager

Authorized by the Act of July 7, 1955, as
amended, to administer oaths (18 USC & 4004.)

[Signature]
Rudy Rudolph

Feb-20-05
DATE

MEMORANDUM

TO: UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
215 RUSK ST.
HOUSTON, TEXAS 77002

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

FEB 25 2005

ATTN: CLERK OF COURT

MICHAEL N. MILBY, CLERK OF COURT

FROM: RUDY RUDOLPH
REG. NO.
F.C.C. COLEMAN LOW B-3
P.O. BOX 1031
COLEMAN, FLORIDA 33521-1031

4-05-0669

RE: Filing of 28 U.S.C. 2255 (Case No. #00-633-02)

DATE: February 20 2005

Clerk of the Court

Please find enclosed a complete form for submission and a timely filing per AEDPA.

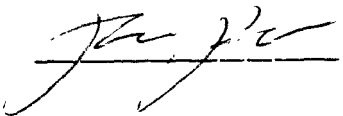
As it will noted under Ground One my attorney failed (Ineffective Assistance of Counsel) to perfect a direct appeal as I instructed him to do. Thus, per the Supreme Court in relation to a timely filing of Section 2255's one year limitation period a judgement of conviction becomes final when the time expires for filing a petition for certiorari contesting the appellate court's affirmation of conviction (Clay v. United States US March 4 2003) Therein provides essentially 15 months from the date of appellate decision.

The sentenced of the Defendant occurred thus final on Nov. 23, 2003. However he has only recently become aware of Counsel Watson's failure to perfect the direct appeal. Thus in accordance with Clay this motion is timely filed.

Further per 'number 2' under the instructions (front page) the Defendant will file a separate memorandum under separate cover

within 21 days on or befor March 15 2005 to fully argue the grounds noted and support for such with citations. I wish to continue in forma pauperis.

Respectfully


Feb. 20. 05

United States District Court
P.O. Box 1031
Coleman, Florida 33521-1031

LEGAL MAIL

H-05-0669

Handwritten: New 225

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK
515 RUSK STREET
HOUSTON, TEXAS 77002

M
B 22
2005

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
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